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10/593,679	09/20/2006	Egon Evertz	23699	2866
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K.F. ROSS P.C.			PAINTER, BRANON C	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/593,679	EVERTZ, EGON	
	<b>Examiner</b>	<b>Art Unit</b>	
	BRANON C. PAINTER	3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 03 February 2009.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1 and 4-19 is/are pending in the application.
  - 4a) Of the above claim(s) 2 and 3 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 and 4-19 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 03 February 2009 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/03/09</u> .  | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Priority***

1. Acknowledgment is made of applicant's request to retrieve the priority documents filed in Germany on 04/07/04 & 07/30/04. These documents have been requested and should be received shortly.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on 02/03/09 is being considered by the examiner.

### ***Drawings***

3. The drawings are objected to because they do not illustrate the invention in a way that is accessible to one of ordinary skill in the art. It is unclear what is being illustrated and how the drawings relate to the claimed subject matter. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several

views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

4. Claims 1, 8, 12, 14, and 16 are objected to because of the following informalities:
  - a. Claim 1, "tension over adjacent at." For the purpose of this examination, the examiner presumes this should read "tension adjacent at."
  - b. Claim 1, "comprising ends." For the purpose of this examination, the examiner presumes this should read "comprising: ends."
  - c. Claim 8, "thereof, has." For the purpose of this examination, the examiner presumes this should read "thereof has."
  - d. Claim 12, "form cavities." For the purpose of this examination, the examiner presumes this should read "forming cavities."
  - e. Claim 14, "aremounted." For the purpose of this examination, the examiner presumes this should read "are mounted."
  - f. Claim 16, "claim 13". This dependency does not disclose profiles or frame structures.

- g. Appropriate correction is required for all preceding objections.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
7. Claims 1, 4-9, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Muller (DE20302249 – English translation) in view of Stubler et al. (6,487,757).
8. Regarding claim 1:

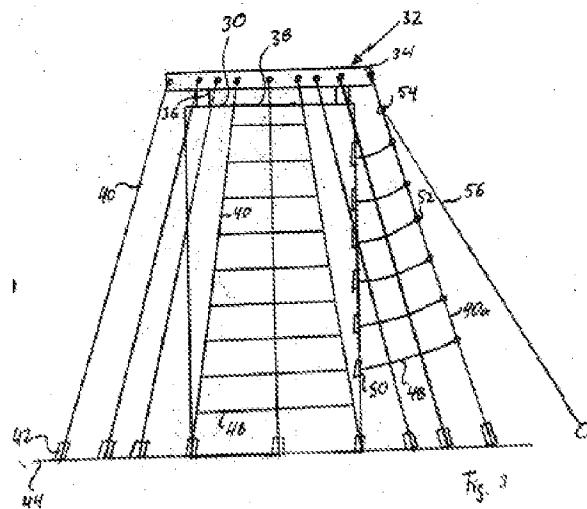
- a. Muller discloses a building protection system including:
  - i. Wire cables maintained under tension (40, Fig. 3).
  - ii. The cable ends of a predetermined cross-sectional size and material (40).

- iii. Clamping bodies that has a guide shaped such that the reaction force of the clamping body increases with an increase in tensile force (42; p. 8, 1-3).
- b. Muller does not expressly disclose that the clamping body guide has a frustoconical surface that narrows progressively in the direction of the tensile force, that the body has a passage receiving the cable end, or that the clamping bodies are made of a harder material than the cable ends.
- c. Stubler discloses a system for connecting a cable to a ground structure that includes a clamping body (26, Fig. 4) with a guide (25) having a frustoconical surface that narrows progressively in the direction of the tensile force, and an inner guide surface material that is harder than the wire cable material (Fig. 4).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to replace the clamping body of Muller with the clamping body as taught by Stubler, as the two clamping bodies are art-recognized equivalents.
- e. The examiner notes that for Stubler to function as intended, the inner guide surface must necessarily be harder than the wire cable, because if it wasn't the tensioned cables would bend and distort the guide, and eventually pull out of the guide entirely.
- f. The examiner further notes that it would have been obvious to a person of ordinary skill in the art to replace the clamping body of Muller with the

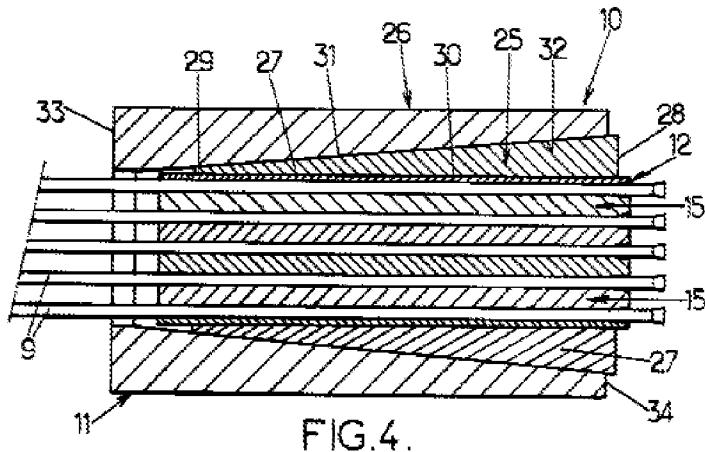
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clamping body as taught by Stubler, since the frustoconical body-guide relationship ensures a strong connection between the cables and clamping body.

- g. The examiner further notes it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.



Reproduced from Muller



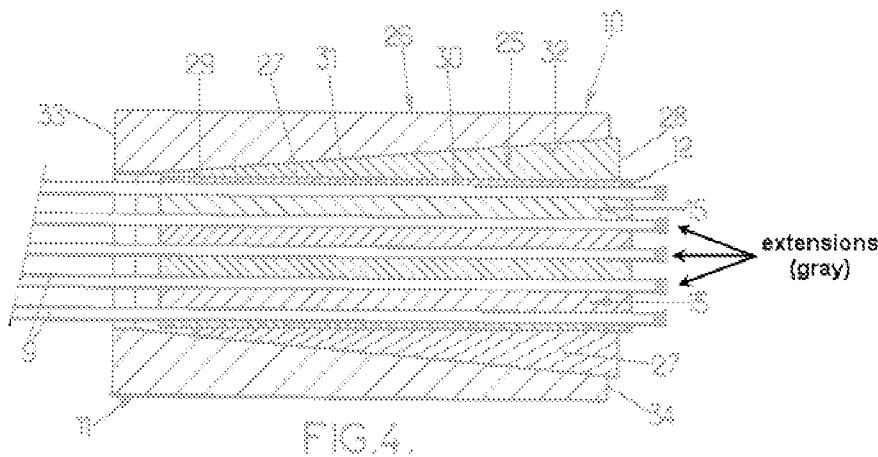
Reproduced from Stubler

9. Regarding claim 4, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with the combination further disclosing a cable that is plastically deformed when relative movement occurs through the guide in the direction of the tensile force.
  - a. The examiner notes that once the cables of Muller/Stubler are placed in tension, any additional force in the tensile direction results in plastic deformation of the cables.
10. Regarding claim 5, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing a cable's end that is divided into a plurality of partial cable elements disposed at mutually acute angles (9).
11. Regarding claim 6, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing a guide comprised of a plurality of clamping jaws mounted at individual mutual angles (25).

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12. Regarding claim 7, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing wire cable extensions comprising strip-like bodies (amended Fig. 4).

- a. The examiner notes that the gray portions in Fig. 4 are considered the extensions of the wire.



Reproduced from Stubler (amended)

13. Regarding claim 8, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing extensions having a continuous broadening (amended Fig. 4).

14. Regarding claim 9:

- a. Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing multiple cables held by a single sleeve (9, Fig. 4).
- b. Muller/Stubler does not expressly disclose that these cables have different breakage strengths or reaction forces.

c. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the cables of the combination by giving some a different breakage strength, since it is well-known to provide cable bundles with one cable of lesser strength in order to provide a warning (via the snapped cable of lesser strength) that the bundle has been placed under too much tension.

15. Regarding claim 17, Muller/Stubler as modified above discloses a building protection system with conical clamping body, with Stubler further disclosing wire cables under tension forming a net structure (40, 46).

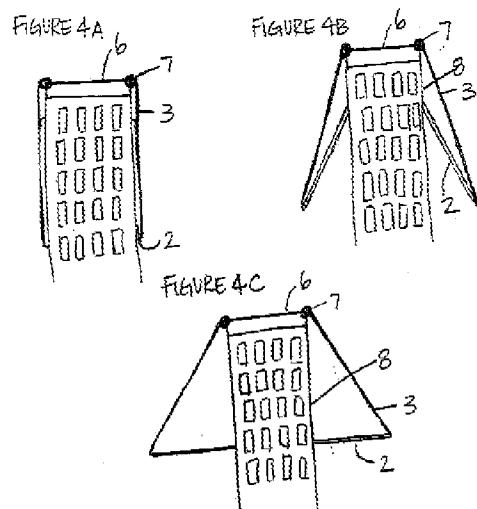
16. Claims 1, 10-16, and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jackson (2003/0115830) in view of Morell (3,952,377).

17. Regarding claim 1:

- a. Jackson discloses a building protection system having all of the applicant's claimed structure, including:
  - i. Wire cables maintained under tension (3, Fig. 4).
  - ii. The cable ends of a predetermined cross-sectional size and material (3).
  - iii. Cables attached to a support beam (2).
- b. Jackson does not expressly disclose how the cables are connected to the support beam, and specifically does not mention that the cables are held by

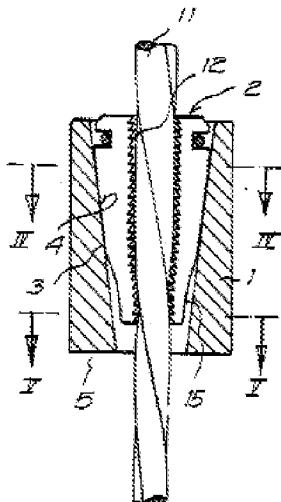
clamping bodies having a guide shaped such that the reaction force of the clamping body increases with an increase in tensile force.

- c. Morell discloses cable gripping/clamping bodies (1, 2, Fig. 2) that have a guide passage (4) receiving the cable end (11 held by 2) and shaped such that the reaction force increases proportional to the tensile force, the clamping bodies made of a harder material than the cables (2 must necessarily be harder than 11, as it would not be able to maintain a grip on the cable 11 if it were softer).
- d. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the cable-beam attachment of Jackson by using clamping bodies as taught by Morell, in order to ensure a stronger, more secure connection between the members by using a connection means that is well-known in the art.



Reproduced from Jackson

**FIG. 2**



Reproduced from Morell

18. Regarding claim 10, Jackson/Morell as modified above discloses a building protection system with conical clamping body, with the combination further disclosing wire cables capable of being accommodated at the roof (3 stored in 7; [0028]).
19. Regarding claim 11, Jackson/Morell as modified above discloses a building protection system with conical clamping body, with the combination further disclosing a frame structure outside the building (6) that offers a surface in which the wire cables can be accommodated (7).
20. Regarding claim 12, Jackson/Morell as modified above discloses a building protection system with conical clamping body, with the combination further disclosing profiles mounted on the roof that form cavities in which wire cables can be accommodated (7).
21. Regarding claim 13, Jackson/Morell as modified above discloses a building protection system with conical clamping body, with the combination further

disclosing a clamping body that is translationally movably connected to the building (2; [0028]).

22. Regarding claim 14, Jackson/Morell as modified above discloses a building protection system with conical clamping body, with the combination further disclosing profiles (2) mounted on facades (8) and that can be rotated, swung, or moved translationally (2).

23. Regarding claim 15, Jackson/Morell as modified above discloses a building protection system with conical clamping body, with the combination further disclosing profiles (2) that cause the cables to be pulled out of storage places (7) and be placed under tension.

a. The examiner notes that claim 15 is considered to be a product-by-process claim. The patentability of the product does not depend on its method of production. Determination of patentability is based on the product itself. See MPEP 2113. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985).

24. Regarding claim 16:

- a. Jackson/Morell as modified above discloses a building protection system with conical clamping body, including profiles (2).
- b. Jackson does not expressly disclose that the profiles are essentially comprised of metal.

- c. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make Jackson's profiles from metal, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.
- d. The examiner further notes that it would have been an obvious matter of design choice to modify the profiles by making them from metal, since applicant has not disclosed that metal profiles solves any stated problem or is for any particular purpose and it appears that the profiles of Jackson would perform equally well.

25. Regarding claims 18 and 19:

- a. Jackson/Morell as modified above discloses a building protection system with conical clamping body, with the combination further disclosing a system that deploys via rotational, swinging, or translational movement of the profiles (2) [claim 18] and that may be "deployed at will, or, upon a sensed condition, by, for example, radar, heat, etc." ([0008]) [claims 18-19].
- b. Jackson appears to disclose a warning system that results in the deployment of the protection system ([0008]).
- c. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the system of Jackson/Morell by automating the profile deployment to react to an alarming condition such as excess heat, since Jackson discloses such deployment and it would allow the building to

remain protected when “protection guards” aren’t on duty and would further protect against threats unseen by the deployment experts.

***Response to Arguments***

26. Applicant's arguments filed 02/03/09 have been fully considered but they are not persuasive.
27. The examiner notes the additional IDS and the error on the International Search Report.
28. Applicant's arguments with respect to the 102 rejections of Mueller and Jackson have been considered but are moot in view of the new ground(s) of rejection.
29. In response to applicant's argument that Stubler is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Stubler relates to the mechanical connection of cables to a building, and Mueller relates to cables connected to a building. The references are clearly analogous.
30. Applicant argues that a Mueller/Stubler would produce inflexible cables. However, application of tension to the taut cables of the combination would cause at least some plastic deformation, stretching the cables minutely and providing at least some give.

31. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., applicant's cable is directly in clamping device while Stubler includes a further wedge member) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).
32. Applicant argues that plastic deformation means taking up slack in the instant invention, not deformation up to the point of yielding. The examiner notes that he is obviously not suggesting the cables should be tensioned until they snap, as is apparently insinuated, as this would clearly result in a non-functioning protection device. However, the examiner notes that plastic deformation is plastic deformation; a combination showing any type of plastic deformation would read on a claim of "plastically deformed." Furthermore, the examiner notes that "taking up slack", or taking a cable from limp to taut as discussed by applicant, would not be considered plastic deformation at all.
33. Applicant argues that Stubler is a completely different fastening system. However, the examiner notes that the fastening system of Stubler, in combination with Mueller, teaches or makes obvious all the limitations of those claims it is relied upon.

***Conclusion***

34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
35. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
36. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRANON C. PAINTER whose telephone number is (571)270-3110. The examiner can normally be reached on Mon-Fri 7:30AM-5:00PM, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rich Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/B. C. P./

Examiner, Art Unit 3633

/Basil Katcheves/

Primary Examiner, Art Unit 3635